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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/828,827   | 04/21/2004  | Max R. Motyka        | 00015-22306         | 5299             |
| 20551 7590 11/26/2008<br>THORPE NORTH & WESTERN, LLP.<br>P.O. Box 1219<br>SANDY, UT 84091-1219 |             |                      |                     |                  |
| EXAMINER<br>ARNOLD, ERNST V  |             |                      |                     |                  |
| ART UNIT   |             | PAPER NUMBER         |                     |                  |
| 1616   |             |                      |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte*: MAX R. MOTYKA, RICK HARNISH,  
STEPHEN D. ASHMEAD and H. DEWAYNE ASHMEAD

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Application No. 10/828,827  
Technology Center 1600

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Mailed: 26 November 2008

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Before LAWRENCE BANKS *Paralegal Specialist*  
BANKS, *Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on September 30, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S CONSIDERATION OF REPLY BRIEF

A Reply Brief was filed in this application on May 6, 2008. There is no evidence on the record indicating that the Examiner has considered the Reply Brief in accordance with 37 CFR CFR § 41.43(a)(1) and MPEP § 1208, part II.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) consider the Reply Brief filed May 6, 2008, as indicated above; and
- 2) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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